

1 1078, 1082 (9th Cir. 2003). Without administrative exhaustion or waiver, we lack subject
2 matter jurisdiction to consider plaintiff's claims under the Social Security Act. See Bass v.
3 Soc. Sec. Admin., 872 F.2d 832, 833 (9th Cir. 1989). Therefore, plaintiff's claims are
4 dismissed without prejudice. Plaintiff's motion to withdraw (doc. 15) is now moot and it is
5 denied for that reason.

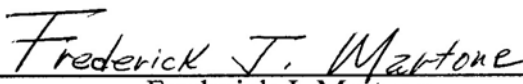
6 The court notes that plaintiff's "notice: motion to withdraw" asks the court, in its
7 discretion, to allow plaintiff "to either remain in the case or to withdraw from it and go back
8 to the Social Security Administration to finish the remaining administrative steps." Notice:
9 Motion to Withdraw at 3. Under Rule 41, Fed. R. Civ. P., a plaintiff may voluntarily dismiss
10 an action through a notice of dismissal without a court order where neither an answer nor a
11 motion for summary judgment has been served. We do not treat plaintiff's "notice: motion
12 to withdraw" as a notice of dismissal because plaintiff appeals to the court's discretion and
13 does not specifically request dismissal. We note for plaintiff's benefit that the result in this
14 case, dismissal without prejudice, would be the same were his motion to be construed as a
15 notice of dismissal.

16 Plaintiff is advised to exhaust his remedies before the Social Security Administration.
17 He is also advised to seek the advice of counsel. If he does not have a lawyer, he may wish
18 to contact the Lawyer Referral Service of the Maricopa County Bar Association at (602) 257-
19 4434.

20 **IT IS ORDERED GRANTING** the Commissioner's motion to dismiss without
21 prejudice (doc. 12).

22 **IT IS FURTHER ORDERED DENYING** plaintiff's motion to withdraw (doc. 15).

23 DATED this 24th day of September, 2009.

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27 Frederick J. Martone
28 United States District Judge